Supreme Court, U.S.
FILED
APR 8 1982
ALEXANDER L. STEVAS
CLERK

No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

RESPONDENTS' SUPPLEMENTAL BRIEF

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April 9, 1982

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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At the oral argument of this case on March 3, 1982, Justice Blackmun directed counsel for respondents to prepare a supplemental brief specifying the acts committed by each of the petitioners giving rise to liability for damages. This brief is submitted to comply with that order.

I. MANAGEMENT OF THE BOYCOTT.

The basis on which the Mississippi Supreme Court held that petitioners were liable for damages was "the

agreed use of illegal force, violence and threats." Mississippi Supreme Court Opinion at 23a.[1] The state supreme court held that the chancellor was "bound to [find] from the record" that "the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants," and that those defendants who actually engaged in acts of physical force and violence were "acting for all others" when they did so. *Id.* at 20a.

In our opening brief we argue that the state courts did not violate the Constitution by holding defendants liable for damages caused substantially by constitutionally unprotected conduct. Resp. Br. at 3-17. We also argue that the requisite intent can be inferred from conduct. *Id.* at 39-41. One important source of evidence is participation in the management of the boycott. Anyone who participates in the decisionmaking functions of an enterprise, with full knowledge of the tactics by which the enterprise is being conducted, manifests his assent to those tactics, and the Constitution does not prohibit courts from finding as a matter of law what is true in fact.

The ongoing management of the Port Gibson boycott was conducted at a series of meetings. Participation in these meetings was the principal way in which boycott activists exercised control over the conduct of the boycott for good or ill. Inferences of assent to the conduct of the boycott from participation in these management meetings is a far cry from a finding of "guilt by affiliation." Anyone who worked for the boycott intending that coercion contribute substantially to its success—anyone who intended that people who did not wish to boycott should

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[1] Citations to the state court opinions are to the Appendices to the Petition for Certiorari.

be frightened into compliance[2]—was a willing participant in a conspiracy that cannot claim the protection of the First Amendment. The facts in the record fully support the state courts' finding that this conspiracy included everyone who participated actively in the management of the boycott.

Although one or two of the boycott meetings had as many as 500 to 600 people in attendance, only about 75 to 90 persons participated in the regular meetings. R1426-32, 1271-74.[3] These meetings were held every Tuesday night, and were for the purpose of discussing, making decisions about, and assuring the continued success of the boycott. R1224-27, 2783-99, 6970. At these meetings the names of boycott violators were promulgated. J.A. 158, 165-66. The organization that became the Black Hats originated at an early boycott organizational meeting. J.A. 147-48. Decisions were made either

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[2] It is important to observe that in order to be liable, a petitioner need not have intended that violence actually occur when he uttered a threat of violence. It is enough that he have intended that his threat result in instilling *fear* of violence into prospective customers and thereby injuring the business relations of the respondents.

[3] Wherever possible, citations are to the Joint Appendix (J.A.). Citations to portions of the record not in the Joint Appendix were originally compiled partly from the copy of the record that is on file with the Court, and partly from an abstract of the record prepared by the petitioners in perfecting their appeal in the Mississippi Supreme Court. These citations have been checked against the record for the accuracy of their substance, but not for the accuracy of their page numbers. On April 6, 1982, counsel for respondents visited the office of the Clerk of this Court in an attempt to check the citations in this brief against the record, and was told that the record is not now available for this purpose and cannot be made available in the foreseeable future. To the best of our knowledge this copy of the record is the only copy in existence with complete and accurate page numbers. Therefore this brief is being filed with some page numbers that have not been checked, and some references to record page numbers are probably slightly inaccurate. We apologize to the Court for any inconvenience.

by consensus or by voting. R2484-89, 2783-99, 3791-95, 3833-40, 3923-26, 5604-06, 7276-78. The case of petitioner Bernice Lee, who was accused of buying eggs from a boycotted merchant, is illustrative. Her grocery store was placed under boycott at one Tuesday night meeting, store watchers were stationed outside, and for a week the store had practically no business. The following Tuesday Mrs. Lee and her husband attended the meeting and asked to be removed from the boycott, saying that they had not known they were violating the boycott by having a white merchant deliver eggs for resale. The body voted to remove the Lees from the boycott. The storewatchers then stopped guarding the store, and the normal level of trade resumed. R7276-78. Although most of the petitioners tended in their testimony to minimize the importance of the meetings and the extent of their own participation therein,[4] often testifying

[4] In anticipation of any reply brief petitioners might file, we readily concede that there is some record evidence to support inferences other than those we suggest in this brief and in our opening brief. We are, however, attempting to show that there is support in the record for the findings the state courts made: (1) that the boycott succeeded in large part because of violence, threats, and the consequent pervasive fear; (2) that petitioners intended this result. "The fact that there was evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony." Lyons v. Oklahoma, 322 U.S. 596, 603 (1944). Petitioners have attempted to get around this rule by asserting that certain evidence is "uncontradicted in the record." *See* Pet. Rep. Br. 3 n.2 (when Mrs. E. J. Jennings testified that she was afraid "something might happen" to her if she broke the boycott, "the only such fear she testified to was again the fear of being 'embarrassed' and socially ostracized."). *But see* J.A. 237 (testimony of Mrs. E. J. Jennings): "Well, I hear that sometime they may take it away from you, or do something to you." "Q: Take what away from you?" A: Whatever you've got. Whatever you buy." Petitioners apparently believe this testimony is irrelevant because Mrs. Jennings might have thought that in other places they take people's packages away but in Port Gibson they merely embarrass people. This is not what the state courts found.

that they did not remember much that was said, the record reflects that the meetings are where the decision-making power rested, and that this power was exercised.

The participants in these meetings knew that fear was a major factor in the success of the enterprise they commanded—fear of injury to person and property, to be carried out by the men they had designated as the enforcers of the boycott. Chancery Court Opinion at 17b, 20b; *see* J.A. 76-77, 110-11, 121, 157-61, 172, 211-12, 219-21, 225-27, 231-34, 237, 259-63, 278-81, 287-91, 297-301, 303, 312, 335-37, 371-74, 392, 397-401, 412, 425-26. These men were the source of the names that were denounced at the weekly meetings, and they were also frequently observed destroying goods that customers had purchased at the stores they had been assigned to guard. *See* J.A. 67, 71, 115, 117, 422, 424. Yet they were not taken from their posts and replaced by a system of voluntary compliance; there is no evidence that any of the petitioners even admonished them for their enforcement methods; the successful system of paramilitary enforcers on the streets and "rhetorical" threats of violence by boycott leaders was left in place for the duration.

Contrary to the petitioners' assertions, it would not have been necessary for them to "begin making purchases . . . immediately upon learning" of violent boycott enforcement in order to avoid liability. Pet. Rep. Br. 14. This suit was not brought against the thousands of people who, from principle or fear or some combination of the two, refrained from buying. It was not even brought against the 500 people who voted to impose the boycott. The petitioners, with only a handful of exceptions, are those whom the record shows were regular participants in the weekly management meetings.

The record supports a finding that the following petitioners participated regularly in the Tuesday night meetings. In some cases the cited testimony specifies that attendance was frequent, and in others the context of the

testimony suggests that the petitioner's attendance was a regular occurrence rather than a rare one:

Ferd Allen (R1249-52, 6648-51, 9676-81, 9692, 9809), Henry Anderson (R2783-99, 3358-70, 8353-58), Alonzo Atlas (R3358-70), Calvin Bailey (R1433-44, 2783-99, 3358-70), James Bailey (J.A. 158-60, R2661-64, 2787-99, 3487-96), McLawrence Bailey (R2783-99, 3923-26), Joseph Barber (R1249-52, 8690-94), Kenneth Barber (R12134-44), Marjorie Brandon (R1252-55, 2783-99, 4431-41, 8167-71), Tullos Brown (R1255-57, 2783-99, 4431-41), Janie Brown (R1252-55, 2783-99, 4431-41, 8167-71), Eddie Burrell (R1257-62, 1484-90, 4431-41, 8986), Robert Butler Jr. R1257-62, 2783-99, 3399-3409, 4431-41, 9823), Arthur Lee Camphor (R1257-62, 2783-99, 4431-41, 5890-92), Irma Rae Camphor (R2783-99, 4431-41), W.E. Camphor (R1257-62, 3833-40, 5878-85), Alberta Coleman (R1257-62, 2783-99, 6651-58, 12229-34), Alexander Collins (1232-33, 1257-62, 2783-99, 11161), Geneva Collins (R1257-62, 2783-99, 4441-47), Thelma Crowder (R1262-63, 2783-99, 4441-47), Dan Currie (R1263-65, 2783-99, 4447-53, 6060-66), Sarah J. Currie (R1263-65, 2783-99, 4441-47, 6168-75), Charles Davis (R2783-99, 4441-47, 62220-22), James Devoual (R2799-2808, 9975), Geneva Durham (R1263-65, 11635-49), Johnny Durham (R1263-65, 2799-2808, 4447-53, 6900-04, 6970), Jim Ellis Jr. (R2799-2808, 3358-70, 3833-40, 4447-53, 8788-90), Charles Evers (R1232-33, 1265-69, 2773-88, 2799-2808, 4454-55), James Gray (R4455-62, 4564-66, 6659-63), Walter Griffin Sr. (R2799-2808, 4455-62), Bernard Gusta (R2799-2808, 4455-62), Leesco Guster (J.A. 165-66, R2799-2808, 3720-26, 4455-62), Clyde Harvey (R2799-2808, 6844-50), Jim Holt (R1265-69, 2799-2808, 4455-62, 9200-04), Willie Jackson (R12611-20), Jesse Johnson (R1269-71, 2799-2808, 4462-67, 13055-65), Roscoe Johnson (R2799-2808, 3571-74, 4462-67, 12819-29), Julia Coleman Jones (R1269-71, 2799-2808, 4462-67, 6470-73), Marcus Jones (R2799-2808, 4462-67, 10123-25), Nathaniel Jones (R1269-71, 2799-2808, 3370-81,

4462-67), Samuel Jones Jr. (R2799-2808, 3370-81, 4462-67), Bernice Lee (R1269-71, 6669-73), Edward Lee (R1269-71, 2840-42), Margaret Liggins (R1269-71, 2799-2808, 4468-72, 6857-60), Julia Lucas (R2799-2808, 4468-72, 12737-48), Nathaniel Martin (R1271-74), Leander Monroe (R1271-74, 2799-2808, 4468-72), Johnny Moore (R2799-2808), Mary Lee Moore (R2799-2808, 7506-10), Ellis Neal (R1274-79, 2799-2808, 4473-78, 6989-95), Amos Newsome Jr. (R1274-79, 2799-2808, 4473-78, 6560-71), James Odom (R2799-2808, 3370-81, 4473-78, 9115), Leona Owens (R2799-2808, 4478-82, 10460-77), William Owens (R1274-79, 4478-82, 8425-29), Evan Roberson (R2799-2808, 4478-82, 6534-38), William Roberson (1279-83, 2799-2808, 2310-30, 4478-82), Mary Ross (R1279-83, 2799-2808, 6754-56, Odessa Ross (R1279-83, 2799-2808, 3566-70, 4482-86, 10880-82), William Matt Ross (R1279-83, 2799-2808, 3571-74, 4482-86), Elmo Scott (R2718-55), Rudolph Shields (R1279-83, 2259-63, 3389-98), Oliver Shinall (R2310-30, 3833-40), Bilbo Smith (R1445-50), Ira Thomas (2799-2808, 4487-94, 13331-32), Carl Thompson Jr. (R1285-87, 4365-70, 4431-41), Marguerite Thompson (R1239-41, 1271-74, 2799-2808, 4487-94), Mack Tisdale (R2799-2808, 4487-94), George H. Walker (R1287-90, 2799-2808, 3370-81, 3571-84, 4494-95), Thelma K. Walker (R1287-90, 2799-2808), Eddie Walls Jr. (R1293-96, 2799-2808, 4495-99, 6659-63), Alex Warner (R1293-96, 2799-2808, 4626-41, 10618-19), Albert Weathers (R2799-2808), Carl Lee Wells (R4501-07), Eddie Lee Wells (R4257-63, 4501-07), Katie Wells (R1293-96, 2799-2808, 3561-70, 4122-25, 4501-07), James Whitney (R2799-2808), Calvin Williams (R1232-33, 1296-99), Ernestine Williams (R2799-2808, 4501-07, 6802-11), Aaron Wilson (R2799-2808, 14142-45).

There is evidence in the record that the following petitioners took leadership roles in the boycott management meetings, by conducting the meetings, reading out names of boycott violators, giving speeches in favor of compli-

ance with the boycott, and/or lecturing on boycott enforcement tactics: Charles Evers (R1167-72, 2773-83), Alexander Collins (R1167-72, 2773-83, 11161), Calvin Williams (R2773-83, 11161), Rudy Shields (J.A. 175, R3389-98, 4980, 5014-16), Nathaniel Jones (R2773-83, 11161), Walter Griffin (R2773-83, 11161), Mack Tisdale (R2773-83), Leesco Guster R3720-26), Geneva Collins (R4441-47), W. E. Camphor (R5878-85, 5906), Eddie Walls (R1244-47).

Petitioner Marjorie Brandon, who served at times as NAACP Secretary, testified that "in the meetings there were statements saying you would be dealt with" if you traded in boycotted stores. She said "dealt with" meant "that they would take care of you, do something to you, if you were caught going in." J.A. 219.

II. BLACK HATS AND OTHER BOYCOTT ENFORCERS.

The role of the Black Hats as a principal cause of the pervasive fear in the community that contributed substantially to the success of the boycott is described at length in our opening brief and in the state court opinions. Mississippi Supreme Court Opinion at 20a; Chancery Court Opinion at 19b-20b, 39b; Resp. Br. at 1-3, 35-37. Once the pattern had been established—warnings to prospective customers, destruction of goods purchased at boycotted stores, public displays of weapons and of military discipline, denunciation of names gathered by the store-watchers, and subsequent violence against the persons and property of boycott breakers—store-watching in Port Gibson became the sort of activity from which a court could reasonably infer an intention to frighten people away from the stores. The destruction of property and other violent acts by store-watchers began in the very first days of the boycott, and within a few days their presence was enough to frighten off prospective customers. J.A. 68, 72, 104.

There is evidence that the following petitioners were members of the Black Hats: Alonzo Atlas, Henry Anderson, Calvin Bailey, James Bailey, McLawrence Bailey, Tullos Brown, Robert Butler, Jim Ellie Jr., Walter Griffin, Clyde Harvey, Jim Holt, Marcus Jones, Nathaniel Jones, Samuel Jones Jr., James Odom, Elmo Scott, Bilbo Smith, George Henry Walker, Carl Wells, Eddie Lee Wells, James Whitney, Calvin Williams. J.A. 50-62 101, 124-27, R788-92, 1126-31, 2086-96, 2899, 3358-81, 4501-07, 8798-8800, 9200-04, 9237-43, 9275-76, 9855-57.

Other petitioners, although there is no evidence that they were members of the Black Hats, served as store watchers: Eddie Burrell, James Burrell, A. L. Camphor, Charles Collier, James Collier, Charles Evers, James Gray, Leander Monroe, Eddie Walls, Albert Weathers, Katie Wells, Aaron Wilson, Janie Brown, Dan Curry, Marjorie Brandon, Willie Moore, Henry Patton Jr., Alexander Collins and Mary Ross. J.A. 423-24, R668-92, 712, 1202, 1204-05, 2073-75, 2086-2100, 5604-06. There was testimony that the store-watching activity was conducted so as to threaten prospective customers. J.A. 423-24. Store-watchers knew that those whose names they gathered frequently met with "punishment" after their names had been read at the weekly meetings. J.A. 158-160.

Rudy Shields, the principal organizer of the Black Hats, was also in charge of directing the store-watchers. J.A. 216-17, R3528-37, 4998. Shields testified that he organized the Black Hats to "frighten off the Klan" (J.A. 216); although there is no evidence of Klan presence in Claiborne County during the boycott, and the evidence overwhelmingly indicates that the purpose of the Black Hats was to enforce the boycott (*see, e.g.*, J.A. 62, 104, 112-13, 126, 134), Shields's characterization of his group supports the state courts' finding that the purpose of the store-watchers was to frighten off prospective customers.

III. PETITIONERS WHO INDIVIDUALLY ENGAGED IN VIOLENCE OR THREATS.

Those petitioners who themselves engaged in violent acts or who threatened violence have provided the best possible evidence that they wanted the boycott to succeed by coercion whenever it could not succeed by persuasion. In the case of any such individual, it is unnecessary to decide whether his participation in meetings or in other intrinsically nonviolent activities was a manifestation of assent to associated violence and threats. One who commits tortious activity in the pursuit of a common plan may be held liable for the effects of other, different torts committed in pursuit of the plan, since his intention to have the plan succeed as a result of such conduct is manifested by his own tortious conduct. In this case, for instance, a petitioner who threatens to beat up Mr. A if he doesn't observe the boycott may be held liable for the effects of another petitioner's threat to break the neck of Mr. B if *he* doesn't observe the boycott; both petitioners are working for the success of the same enterprise, and it is extremely unlikely that the first petitioner wishes to injure the business relations of the merchants with Mr. A by coercion but with Mr. B only by persuasion. *See* Restatement of Torts 2d, § 876 and comments thereto.

There is evidence that the following violent acts or threats were committed by the following petitioners:

Marcus Jones and Bilbo Smith threatened to take Roosevelt Wyatt's package away from him as he came out of a boycotted store. R646.

Calvin Williams told Ernest Darden, after a group of about fifty people had surrounded the car in which Darden's wife and children were sitting, that the sheriff might be able to help Darden go into a boycotted store to get his groceries, "but these white folks ain't gonna sleep with you." J.A. 44-50, 83-84.

Calvin Williams, Rudy Shields and James Whitney drilled the Black Hats in the streets of Port Gibson in military formation with rifles. J.A. 50-54, 79-81.

Rudy Shields beat up a teenaged boy, William Holt, because Holt was on the wrong side of the boycott. J.A. 54-55.

Marcus Jones grabbed James Hudson's teenaged daughter by the arm on the street outside of Hudson's store as he walked by with several other Black Hats. He said, "Come and go with me." J.A. 58-62.

Calvin Williams stood on the steps of the courthouse and said, "If you trade in them stores, any of you, we'll know who they are and my boys will get you." J.A. 76.

Rudy Shields said, "If I catch you shopping, any of my men catch you shopping, we'll be down to your house tonight. You won't have a house tomorrow. We'll burn your house." J.A. 68.

Rudy Shields told a white man on the first day of the boycott, "If I catch you going in that G.D. Store, I'm going to stomp your G.D.A." J.A. 68.

Albert Weathers threatened Preacher White for buying gasoline at a white-owned station. White made an oral complaint to the chief of police; he was afraid to sign an affidavit ("afraid of what might happen to him later," J.A. 123), but asked that the police keep a watch on his house. J.A. 121, 123.

James Bailey tore up Mrs. Butler's flower garden in retaliation for her continuing to deal with white merchants after being warned. J.A. 121-22.

James Bailey was convicted of a theft of tapes, an incident he testified that he thought was related to the boycott. J.A. 154-55.

Marcus Jones, McLawrence Bailey, Rudy Shields, Charles Evers, Calvin Williams, Joseph Barber, Calvin

Bailey, Albert Weathers, and Eddie Lee Wells "physically stopped customers, or prospective customers, from entering the premises." J.A. 70-71.

Calvin Bailey, McLawrence Bailey, James Bailey, and Rudy Shields took packages away from customers (Shields about twenty different times). J.A. 70-75.

Tullos Brown told a customer he had "better not" go into a store. R. 812-14.

Rudy Shields was charged with trespassing, profane swearing and threatening two ladies who were sitting on the porch of a boycotted store. J.A. 107-09.

Rudy Shields, Eddie Lee Wells and another man took tomato plants from a woman who had purchased them in a boycotted store. R. 2045-55.

Rudy Shields and another man confiscated and destroyed bread in the possession of a man trying to make a delivery to a boycotted store. J.A. 114, 117.

George Henry Walker prevented Wes Butler from going into a boycotted store. Butler went and got the police chief to go into the store with the money to pay his bill. R. 2178.

James Bailey (a 218-pound convicted child molester) testified that he sometimes would "pull [prospective customers] away" by the arm while he was on duty as a store-watcher. J.A. 155, 158.

Eddie Lee Wells and another man shot at Johnny and Susie Cox a few days after warning them not to go into a boycotted laundry. J.A. 308-24.

Calvin Bailey, Elmo Scott and James Whitney shot into James Gilmore's house. Gilmore, his wife and baby were in the room into which the shots were fired. Gilmore had been violating the boycott and had heard from other black people that this was "against their law," "they" being the NAACP. J.A. 326-35.

Rudy Shields, Jimmy Ellis and two other men beat up Emerson Davis. Davis testified that "Shields said I was trying to break up his damn boycott." J.A. 369-71.

James Bailey threatened to kill Emerson Davis. The threat was issued during a dispute in which Bailey cut Davis off in an automobile. Davis testified that Bailey "was a civil rights worker, and he wanted to get up a rowl." J.A. 374-75. Bailey testified that a few days before the automobile incident, while Bailey was on duty as a store-watcher, Emerson Davis had gone into a store despite the fact that Bailey had warned him not to go in. J.A. 151-53.

To the best of our knowledge, these are the only incidents—aside from those involving Charles Evers, discussed below—in which specific individual petitioners were identified as the perpetrators of illegal acts. This list does not include, of course, the many acts of boycott enforcement whose perpetrators were never identified or whose victims were afraid to come forward, but which also contributed to the "atmosphere of fear that prevailed among blacks from 1966 until 1970" in Claiborne County. Chancery Court Opinion at 35b.

IV. THE LIABILITY OF CHARLES EVERS AND THE NAACP.

As we point out in our opening brief, the liability of Charles Evers and of the NAACP does not depend on a conspiracy theory properly so called. Rather, Evers himself threatened violence on a number of occasions against boycott breakers. He was acting in his capacity as Field Secretary of the NAACP when he committed these tortious and constitutionally unprotected acts, which clearly manifested his intention to injure the business relations of the merchants by instilling fear in prospective customers. Thus, if the state courts were right in finding that fear was in fact a substantial factor in the success of the boycott, Evers and the NAACP are jointly liable for all damage occasioned by the boycott. This liability is joint with all other petitioners who

acted to injure the business relations of the merchants by threats or violence. Each tortfeasor is liable for the damage occasioned by the torts of the others. Restatement of Torts 2d, § 876. It is not necessary that Evers actually intended violence to occur, but only that he intended for the merchants' business relations to be injured because prospective customers would be *afraid* of violence.

We have cited and discussed in our opening brief Evers's two threats to break the necks of boycott breakers; his threats to "take care of", "chastise", and "discipline" blacks who disobeyed him; and his numerous references to the Black Hats as his "enforcers." Resp. Br. 34-35. The state courts found that "the black people believed him" when he "promised violence." Chancery Court Opinion at 38b. In light of petitioners' efforts to persuade this Court to overturn the state court findings and to construe "discipline," "chastise" and similar language as references to nonviolent "tongue-lashings," we wish to call the Court's attention to further record evidence of Evers's intentions and modus operandi:

Sheriff McKay testified that he once heard Evers threaten to hang the President of Alcorn A&M. R1172-79.

Evers said of the two policeman (one white and one black) who were involved in the Dusty Jackson shooting, "If those two get back on the street you ought to take their pistols off and beat them right there on the street." Exhibit C-43 (Commercial Appeal article of Jerry DeLaughter, April 21, 1969), R4923. It should be observed that Evers's view that the two policemen had murdered Jackson was sharply contested. *See* Chancery Court Opinion at 25b-26b.

In Evers's autobiography he wrote that he kept a store of hand grenades, and that "we meant to use them if we had to." J.A. 205. At trial he testified that the grenades were purely defensive weapons. J.A. 206.

In our opening brief we attempted to use Ever's autobiography to illustrate that when he had used words like "punish" and "take care of" during the Port Gibson boycott, he referred to tactics such as taking bags away from customers, putting sugar in gas tanks, and throwing brickbats through windows. Resp. Br. 4, J.A. 201. Petitioners reply that the autobiography is irrelevant because the quoted passage refers directly to a boycott in Natchez. Pet. Rep. Br. 10 n.9. In context, however, we believe the quoted passage applies to all the boycotts Evers directed (*see* J.A. 201-02), and that when Evers spoke of "disciplining your own family" he did not mean brickbats in Natchez and tongue-lashings in Port Gibson.

Petitioners also commit a gross distortion when they cite our "assertion" that Evers "organized" the Black Hats as his "enforcers." Pet. Rep. Br. 6. We made no such assertion; Evers did not *organize* the Black Hats; we said he *designated* them as his enforcers, and he did. Resp. Br. 9, 35-37; J.A. 62. Petitioners were wrong to accuse us of "approach[ing] the limits of permitted license" when we made a true statement and they made a false statement about what we said.

Petitioners further assert that "his testimony that he never even knew the group existed is uncontradicted." Pet. Rep. Br. 6, Evers testified only that he didn't know the group of storewatchers was *called* the "Deacons," which was the name of a regional paramilitary organization. J.A. 189. He testified that he knew the storewatchers wore black hats, that he knew they marched in military formation, that he knew they were impressive physical specimens who "could take care of business, if necessary," and that he sometimes joined them in their store-watching activities because "every man likes to show his strength sometimes." J.A. 187-93.

The record abundantly supports the state court findings that when Evers threatened people he meant for

them to fear violence. When Evers reminded his audience that they "needn't go calling the chief of police, he can't help you none. . . . He ain't going to offer to sleep with none of us men" (J.A. 94-95), he was not referring to the possibility that boycott breakers would be visited in the middle of the night by people who would administer tongue-lashings.

The NAACP is liable for Evers's tortious acts committed in his capacity as its Field Director. *See Cantrell v. Forest City Publishing Co.*, 419 U.S. 245 (1974) (newspaper that hired reporter was liable for damages occasioned by his libelous article under theory of respondeat superior notwithstanding First Amendment arguments); *NAACP v. Overstreet*, 221 Ga. 16, 142 S.E.2d 816, *cert. dismissed as improvidently granted*, 384 U.S. 118 (1966); Resp. Br. 17-21 and authorities cited therein.

V. OTHER PETITIONERS.

We are unable to determine on what record evidence the state courts relied in finding liability on the part of seven of the petitioners.

Helen Beasley was an NAACP member who testified that she attended no boycott meetings and did not actively participate in boycott activities. R11969-12037. We are unable to identify any evidence that conflicts with Mrs. Beasley's testimony.

Bill Beasley testified that he was an NAACP member who was neither for or against the boycott. He testified that he never attended any NAACP meetings. Although he is identified in petitioners' brief as being one of 39 petitioners who "engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets," Pet. Br. at 35 & n.38, the petitioners give no record citation for this evidence and we can find none.

Calvin Blackburn testified that he observed the boycott but that he never attended meetings. R11555-11628. There was evidence that he participated in marches.

R. 1252. We can find no evidence of his manifestation of assent to threats and violence.

Mary Ella Dee testified that she was an NAACP member who attended only two meetings, that she was in favor of the boycott but did not participate in boycott activities. We can find no evidence to contradict her testimony and no evidence that she assented to violence. One factor on which the state courts might have relied is that as the owner of a grocery store that competed with boycotted stores Mrs. Dee had a financial stake in the boycott. A lower level of participation in boycott activities may have been required for her and for other petitioners, including Nathaniel Martin, Bernice Lee, Ferd Allen and Arthur Wyatt, who owned competing establishments or who owned stock in Our Mart. *See* R7270-78, 8508-25, 9457-60, 9720, 10047-57.

Harvey Ellis and Katie Ellis both testified that they were NAACP members who attended only two or three meetings. R11807-13, 11879-82, 11888-95. We can find no evidence to contradict their testimony, although petitioners state without a record citation that they "engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets." Pet. Br. at 35 & n.38.

Arthur Wyatt is a store owner who is a member of the NAACP but who testified that he was not active in the boycott and that he was threatened for not complying with the boycott. R7037-75. We can find no evidence to contradict his testimony.

We cannot be positive that there is no evidence on which to sustain the state court judgments that these seven petitioners endorsed the conduct of the boycott, but our assiduous search has yielded none except that which is given above. If this Court finds no evidence to sustain a finding that these petitioners endorsed the violent and coercive tactics by which the boycott was conducted, then the Court will be faced with the question of the constitutionality of the trial court judgment hold-

ing petitioners liable on the basis of their participation in a concerted refusal to deal and (at least in the case of petitioner Blackburn) participation in related activities. We have addressed this issue in our original brief. Resp. Br. 41-46. This Court has never held that boycotts are constitutionally protected activity, and this is not the case in which to consider such a holding, for the reasons stated in our original brief.

CONCLUSION

For the reasons stated above and in our opening brief, the judgment of the Mississippi Supreme Court should be affirmed.

Respectfully submitted,

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April 9, 1982